I agree with the proposed order as to costs.

Appeal allowed.

Solicitor for Appellant— *Johannes & Sammy.*

Solicitor for Respondent— *Kow Soon Kim.*

(Original Civil Jurisdiction)

TERRELL, J.

December 30, 1932.

In the Matter of certain parts of the Estate of Khoo Cheng Teow devised by his Will dated the 19th day of December 1895.

and

In the matter of the Civil Procedure Code Section 68 (8).

THE BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD. the present trustees of the Will of KHOO CHENG TEOW deceased).....Plaintiffs.

vs.

KHOO SENG SENG (the Administrator of the Estate of KHOO KOK OON deceased) Defendant.

(Singapore Originating Summons No. 187 of 1932).

Trust—devise—Sin Chew—*superstitious uses.*

Gifts for *Sin Chew* purposes are neither void as being gifts for superstitious uses nor void under the law of the Straits Settlements. *Siow Ah Yen* v. *Siu Ah Chit*, 1 Quarterly Notes No. 4 applied. *Bourne* v. *Keane*, (1919) A.C. 815 distinguished.

An Originating Summons asking for the determination of certain questions arising out of the Will of Khoo Cheng Teow deceased, heard by Terrell, J.

The material question for determination arose under clause 5 of the Will and concerned the devise of No. 56 Church Street Singapore for purposes of maintaining *Sin Chew* ceremonies. The material parts of Will are set out in the Judgment.

Charlesworth for the plaintiffs.

Burke for person appointed to represent residuary legatees.

Withers Payne for Khoo Guan Hoe representing next of kin.

Cur. Adv. Vult.

Terrell, J.—The Originating Summons concerned two properties No. 56 Church Street and No. 241 Teluk Ayer Street, Singapore, which passed respectively under clauses 5 and 4 of the Will of Khoo Cheng Teow and are the only properties now remaining subject to the trusts of the Will.

As regards No. 241 Teluk Ayer Street there is no particular difficulty. Under Clause 4 of the Will the nett rents were to be divided during the lives of the testator's sons and adopted sons among such of his sons adopted sons as should become literate in China or a graduate of an English, Scottish or Irish University. None of the testator's sons or adopted sons has so qualified and the only survivors are Khoo Kok Poh and Khoo Kok Keat. The latter by consent dated the 17th October 1932 and filed in these proceedings has consented to forego his rights to qualify under that clause, and Khoo Kok Poh has likewise foregone his rights by his affidavit filed herein on the 13th October 1932 and by the consent of his counsel at the Bar. The objects of clause 4 have accordingly come to an end and according to a well accepted rule of law the subject matter of the devise is caught by the residuary gift. I direct, therefore, that this property be sold with the approbation of the Court and the proceeds distributed as if it were part of the residue. Any of the beneficiaries are to have liberty to bid. The trustees will be entitled to a commission of 2½ (two and a half) per cent which I allow to them by virtue of Section 43 of the Trustees Ordinance 1929.

As regards No. 56 Church Street different considerations arise. The devise is "during the lives of Her Majesty Queen Victoria and her descendants now in being and during the lives and life of the survivors and survivor of them and during the period of twentyone years after the death of such survivor" to let the premises etc. and "to apply the balance of such rents from time to time in the performance of the religious ceremonies according to the custom of the Chinese called *Sin Chew* to perpetuate my memory".

It is clear that the devise does not offend the Rule against perpetuities. If the devise is bad it can only be because the object of the devise is the performance of ceremonies which are to be deemed to be superstitious and prohibited by law on the ground of public policy or illegality.

The only reported case on the subject is a Malacca case *Siow Ah Yen* v. *Siu Ah Chit* decided by McCabe Reay, J. on May 4th 1927 and reported in No. 4 of Vol. 1 of the Quarterly Notes of Cases decided in the Supreme Court of the Straits Settlements. The report is very short and the learned Judge held that a devise for 21 years for the object *inter alia* of "the upkeep of the testator's death tablet and the sacrificial offerings to his soul" did not offend the rule against perpetuities and was not against public policy as a superstitious use. The learned judge professed to be following the ruling in *Yeap Cheah Neo* v. *Ong Cheng Neo*. L.R. 6 P.C. page 381. The decision in the last named case was that a gift for *Sin Chew* purposes was bad as offending the rule against perpetuities and as not being a charity. It cannot be cited as an authority for anything else.

The question of gifts for *Sin Chew* purposes has often arisen but in all the other cases to which I have been referred the gift failed as being contrary to the rule against perpetuities or on the ground of uncertainty, and the question as to whether it was a superstitious use was never the basis of the decision. For instance, in the case of *Cheng Thye Phin* v. *Lim Ah Cheng and others*, Originating Summons No. 361 of 1912 (Penang), unreported, a certain part of the trust fund was bequeathed by clause 12 of the Will to the trustees to be expended, *inter alia*, in providing for and performing the proper yearly ceremonies according to Chinese custom for my deceased ancestors myself and my wives etc." The judgment of Fisher, J. dated the 14th June 1914 declared "that the provision contained in clause 12 of the said Will for the performance of yearly ceremonies.....will upon the true construction of the said Will cease and determine upon the happening of the period of distribution under clause 11 of the said Will and that such provision is not either for uncertainty or as tending to a perpetuity". If this decision had stood it might have been regarded as an authority that the gift for ceremonies was not bad as a superstitious use. The matter, however, went to appeal and the formal order of the Court of Appeal declared that there was an intestacy with regard to the income of the two shares bequeathed for ceremonies. From the written judgments it is clear that the gift was held to be void on the ground of uncertainty. It is to be remembered that the gift was not attacked on the ground that it was contrary to public policy as being a gift for superstitious purposes, though both Sir William Hyndman Jones, C.J. and Sproule, J. point out that in the case of a gift of this kind the Court was under no obligation to assist the testator's intention by approving a scheme *cy-pres*. This is in accordance with a well known principle of the Court of Chancery which will not approve a *cy-près* scheme except when the object of the gift is charitable and a gift for *Sin Chew* purposes has been held not to be charitable (see *Choa Choon Neo* v. *Spottiswoode*, Wood's Or. Cases Appendix at page 6, and *Yeap Cheah Neo* v. *Ong Cheng Neo*, L.R. VI P.C. at page 396).

Then again in the case of Originating Summons No. 140 of 1930 (Singapore), in the matter of the Trusts of Wan Eng Kiat deceased (unreported) Sir William Murison, C.J. held that an ultimate devise in perpetuity of certain houses for *Sin Chew* purposes was void for remoteness. The question whether the gift was void as being a superstitious use was not directly decided, as in that case the gift offended the perpetuity rule. On the question whether the gift was charitable the learned Chief Justice felt himself bound by the decision in *Yeap Cheah Neo* v. *Ong Cheng Neo* cited above.

It was indeed argued in O.S. 140 of 1930 *re Wan Eng Kiat deceased* that as the rule that Roman Catholic Masses for the dead were not charitable was based on *West* v. *Shuttleworth*, 2 My & K. page 684, and as this decision had been overruled by *Bourne* v. *Keane*, (1919) A.C. page 815, a gift for private Masses must now be treated as a good charitable gift, and that on this principle a gift for *Sin Chew* purposes must likewise be treated as a good charitable gift. This argument presupposes two things—(a) that *Bourne* v. *Keane* decided that a gift for Masses was a good charitable gift, and (b) that *Sin Chew* ceremonies stand on the same footing as the Sacrament of the Mass. On examination it will be found that neither supposition can be supported.

On page 825 of the report of *Bourne* v. *Keane* counsel for the appellant admitted that the question whether a gift for Masses in England was a good charitable gift had never arisen in England because hitherto these gifts had been treated as illegal and there could not be a charitable gift for an illegal purpose, and this position is recognised in the speech of Lord Buckmaster at page 863.

It may further be remarked that in *Bourne* v. *Keane* no question of a perpetuity arose. It was therefore quite unnecessary for the House of Lords to decide whether the gift was taken out of the perpetuity rule by being a gift for a charitable purpose. It is true that in Ireland (*O'Hanlon* v. *Logue*, I.R. 1906, 1 Ch. page 247) a gift for Masses for the dead has been held to be a good charitable gift, but it had never been so held in England before the case of *Bourne* v. *Keane* and it was certainly not so decided in that case.

As regards the second supposition, it will I think be found on examination that there is an important distinction between a gift for *Sin Chew* purposes and a Mass for the dead. It is unnecessary to investigate the nature of the respective ceremonies in detail. The nature of the *Sin Chew* ceremonies is fully described by Sir Benson Maxwell in *Choa Choon Neo* v. *Spottiswoode*, Woods' Or. Cases Appendix at pages 4,5 and 6. He concludes with the following words:

> "In the case before me the devise is plainly not "charitable; it has not any charitable object whatever whether general or special in the sense of a "benefit to any living being. Its object is solely "the benefit of the testator himself, and although "the descendants are supposed incidentally to "derive from the performance of the *Sin Chew* "ceremony the advantage of pleasing God and "escaping the danger of being haunted, these advantages are obviously not the object of the "testator, nor, if they were, would they be of such "a character as to bring the devise within the "designation of charitable, as used in our Courts in "reference to such objects."

The Sacrament of the Mass, however, though bearing certain superficial resemblances to the *Sin Chew* ceremonies, has certain essential characteristics which sufficiently differentiate the two ceremonies. Its exact nature was ascertained by evidence in the Irish case of *Attorney-General* v. *Delaney,* I.R. 10 C.L. 104, and the statement in that case was accepted by counsel on both sides in *Bourne* v. *Keane,* (1919) A.C. page 815, as being correct. The distinctive nature of the Sacrament of the Mass is well summarised in the judgment of Holmes, L.J. in the case of *O'Hanlon* v. *Logue,* I.R. (1906) 1 Ch. at page 286:

> "What we can determine with certainty is that "it is part of the creed of the most ancient Church "in Western Christendom, of which the testatrix "was a member; that the Mass is a true sacrifice "offered to God by the priest in the name of the "Church whose minister he is; that every Mass, "whether public or private. is believed to bring "divine blessing to the world, and that all the faith- "ful present or absent, alive or dead, participate in "those blessings".

It will be seen, therefore, that whereas the *Sin Chew* ceremonies are only intended to benefit the testator himself, or the particular deceased persons for whom the ceremonies are performed, the Sacrament of the Mass is for the benefit of all the members of the Catholic Church past or present.

To summarise the results of the above authorities, I find (1) that the rule as to perpetuities applies to the Straits Settlements.

(2) that a gift for *Sin Chew* ceremonies is not a charitable gift and that if it offends the rule against perpetuities such gift will be held void;

(3) that in England a gift for Masses for the dead is not void as a superstitious use;

(4) that it has never yet been decided in England that a gift for Masses for the dead is a good charitable gift;

(5) that even if it were to be so decided, that would be no reason for holding that a gift for *Sin Chew* purposes is charitable. as the characteristics of the two ceremonies are essentially different;

(6) that there is nothing inconsistent between the Privy Council decision of *Yeap Cheah Neo* v. *Ong Cheng Neo,* L.R. VI P.C. page 396, and the House of Lords decision in *Bourne* v. *Keane,* (1919) A.C. page 815.

It remains to consider whether under the law of the Straits Settlements a gift for *Sin Chew* purposes is void as being a gift for a superstitious use.

In this connection a *dictum* contained in the speech of Lord Buckmaster in *Bourne* v. *Keane,* (1919) A.C. page 863 is singularly appropriate. He says:

> "In the present case no general charitable in- "tention is disclosed, the gift is either void or it "passes to the persons and for the purposes defined. "There is therefore no equity affecting the gift: "if void it must be so by common law or statute."

Now as regards the law to be applied in the Colony there have been various decisions of authority. The position is summed up in the following passage from the judgment of the Privy Council in *Khoo Hooi Leong* v. *Khoo Chong Yeok,* (1930) A.C. at page 355:

> "The modifications of the law of England "which obtain in the Colony in the application of "that law to the various alien races established "there, arises from the necessity of preventing the "injustice or oppression which would ensue if that "law were applied to alien races unmodified. That "was the view expressed by Sir Peter Maxwell C.J. "in *Choa Choon Neo* v. *Spottiswoode,* 1 Kyshe 216, "221; and this Board, in *Yeap Cheah Neo* v. *Ong "Cheng Neo,* L.R. 6 P.C. 381, 396, stated that in "Sir Peter Maxwell's judgment the rules of English "law, and the degree in which, in cases of this kind, "regard should be had to the habits and usages of "the various people residing in the Colony are "correctly stated."

As regards statute law, there has never been any ordinance in the Colony declaring *Sin Chew* ceremonies illegal. Nor is there any English statute relating to the subject which can be treated as having been imported into the Colony under the Charters. Before *Bourne* v. *Keane* was decided it might indeed have been held that certain religious ceremonies were to be deemed illegal because of the Act of 23 Henry VIII c.10 and the Act of 1 Ed. VI c. 14 (the Chantries Act). It is also true that by the Act of Uniformity, 1 Eliz. c.2 the celebration of the Mass was rendered illegal and continued so in England until the Act of 31 Geo. III c.32 and the Catholic Emancipation Acts of 1829 and 1832. It has already been decided that the Acts of Henry VIII and Ed. VI are not law here (*Choa Choon Neo* v. *Spottiswoode,* Woods' Or. Cases Appendix page 8) and the same reasoning would apply to the Act of Uniformity. In any case the Act of Henry VIII was repealed by the Mortmain and Charitable Uses Act of 1888 and, as stated above, the Act of Uniformity has also been rendered inoperative. As regards the Chantries Act of Edward VI the decision in *Bourne* v. *Keane* shows that this act did not itself make Masses illegal or provide that property might not thereafter be given for the purpose of procuring Masses to be said or sung. It merely confiscated property *then* held for such or similar purposes (see pages 856 and 857 of the report). It is also to be observed that the statutes above referred to are penal statutes and if they affected anyone their operation must be limited to the members of the Catholic Church. There can be no possible ground for extending the operation of these statutes to the case of religious ceremonies which had never been practised in England

and which therefore cannot have been in the contemplation of the legislatures by which these Acts were passed. I have no hesitation, therefore, in finding that there is no statute law which rendered the performance of *Sin Chew* ceremonies superstitious or void.

As regards the Common Law, it is pointed out by Lord Buckmaster in *Bourne* v. *Keane* at page 863 that it cannot be successfully contended that a gift to provide Masses for the souls of the dead was at all times contrary to the common law. He adds: "The common law of Ireland does not differ from the common law of England and Palles, C.B. in a judgment in the case of *O'Hanlon* v. *Logue*, I.R. (1906), 1 Ch. page 247, showed with great distinctness that in Ireland such a gift is good." If by the common law of England Masses for the dead were not superstitious or void, there can again be no possible reason for coming to a different conclusion in the case of gifts for *Sin Chew* purposes.

It is to be observed that in the case of *Choa Choon Neo* v. *Spottiswoode*, Woods' Or. Cases Appendix, Sir Peter Maxwell makes it perfectly clear that the only ground on which he held that the bequests in that case were void was because they offended the rule against perpetuities and were not charitable. On page 8 he says "On this ground alone, and not because the law condemns as unsound the theological dogma which such a legacy implies.....I should consider a bequest for masses for departed souls void." From these words it may be inferred that Sir Peter Maxwell would have decided in favour of the gift if it had not offended the rule against perpetuities.

I have no doubt, therefore, that gifts for *Sin Chew* purposes are neither superstitious nor void under the law of the Straits Settlements, and it is satisfactory to note that in the countries upon which England has conferred the boon of her common law, gifts for Masses for the repose of the souls of the donor or of any other person are held not to be gifts for superstitious uses or void at law.

In the report of *Bourne* v. *Keane* Lord Atkinson at page 882 shows that it has been so held in the case of Ireland (*O'Hanlon* v. *Logue*, I.R. (1906), 1 Ch. page 247), in the case of Canada (*Elmsley* v. *Madden*, 18 Grant p. 386), in the case of New Zealand (*Carrigan* v. *Redwood*, 30 N.Z.L.R. page 244), in the case of Australia (*Nelan* v. *Downes*, 23 C.L.R. p. 546), and in the case of the U.S.A. (*Holland* v. *Alcock*, 108 N.Y. page 312 and *in re Schouler*, 134 Mass, page 426). As regards the Sacrament of the Mass therefore a consistent opinion in favour of the validity of gifts for such purposes has been held by Courts of the highest authority throughout the British Empire and the United States of America, and it is fitting and proper that the same validity should be accorded to gifts for the performance of ceremonies which are an essential feature of the religious rites of the Chinese and which have been observed by them for countless generations before the present Chinese inhabitants of the Straits Settlements sought the protection of the laws under which they now live.

In the case of No. 56 Church Street, therefore, the trust must continue in accordance with the terms of the Will until the period of distribution arrives.

The costs of all parties must be taxed as between solicitor and client and paid out of the proceeds of sale of No. 241 Teluk Ayer Street.

Order accordingly.

Solicitor for the plaintiffs— *Allen & Gledhill.*

Solicitors for person appointed to represent residing legaters— *John G. Campbell & Co.*

Solicitor for Khoo Guan Hoe— *Drew & Napier.*

(Original Civil Jurisdiction)

Murison, C.J.

December 31, 1932.

YOKOHAMA SPECIE BANK LTD.....Plaintiffs.

vs.

1. LEE KWOCK JOU

2. WING TAI LOONG & CO. .....Defendants.

(Singapore Civil Suit No. 568 of 1932)

Bill of Exchange—Extension of date for payment —whether a re-acceptance—liability for stamp duty—signature of Manager—personal liability—Chop or seal of firm—whether a signature.

Where on a bill of exchange the date of payment is extended and a new one substituted therefor the alteration is not material and no new stamping is required.

International Banking Corporation v. *Pestonji & Co.*, (1925) I.L.R. 49 Bom. 351 not followed.

Where a person accepts a bill and signs his name as manager he is not exempted from liability. *Mare* v. *Charles*, (1856) 5 E. & B. 978; *Leadbitter* v. *Farrow*, (1816) 5 M. & S. 345; *Courtauld* v. *Saunders*, (1867) 16 L.T.N.S. 562; *Nicholls* v. *Diamond*, (1853) 9 Exch. 154 and *Jones* v. *Jackson*, (1870), 22 L.T. 828 applied.

Chapman v. *Smethurst*, (1909) 1 K.B. 927 distinguished.

A firm whose chop or seal is affixed to a bill of Exchange without an accompanying signature is not liable unless evidence is adduced to show that the bill was chopped or stamped with the authority of the partners.

In re London and Mediterranean Bank, (1868) L.R. 3 Ch. 651 applied. *Raman Chetty* v. *Ng Siang Ee*, (1904) 9 S.S.L.R.90 referred to.

Action tried before Murison, C.J.

The facts and arguments appear from the judgment below.

Vaux for the Plaintiffs.

Mundell for the 1st Defendant.

Cur. Adv. Vult.